

Case Summary

Tinnisha Mitchell appeals her conviction for carrying a handgun without a license as a Class A misdemeanor. We affirm.

Issue

The sole issue for our review is whether the trial court erred in permitting the State to introduce into evidence a gun found during a warrantless search of Mitchell's vehicle.

Facts

At approximately 8:00 p.m. on October 28, 2005, twenty-four-year-old Mitchell was following her boyfriend's motorcycle as she drove her car on the eastside of Indianapolis. Marion County Sheriff's Department Deputy Paul Thompson attempted to stop the motorcycle because it was being driven without lights or a license plate. Mitchell "ran interference" for the motorcycle by attempting to stay between it and Deputy Thompson's car. Tr. p. 5. She did not yield to the deputy's emergency lights and siren.

Deputy Thompson was eventually able to pull his car in behind the motorcycle and get it to stop near the entrance to an apartment complex. As Deputy Thompson was arresting the motorcycle driver for driving without a license, Mitchell got out of her car, approached the deputy, and asked him what was going on. Deputy Thompson asked Mitchell to leave, but she continued to question him. The deputy told Mitchell that she had failed to yield to an emergency vehicle and that it was in her best interests to leave the area so that he could take care of his business.

When Mitchell refused to leave, Deputy Thompson asked her for identification and ran the information through his computer. When a search of BMV records indicated that Mitchell's driving privileges in Indiana had been suspended, Deputy Thompson arrested her and told Deputy Andrew Spalding to search her car. Deputy Spalding found a magazine that contained ammunition and a magazine pouch on the front driver's side seat as well as a gun between the seat and the driver's side door.

Mitchell was charged with driving while suspended and carrying a handgun without a license, both Class A misdemeanors. She filed a motion to suppress the gun, which the trial court denied after a hearing. The trial court admitted the gun into evidence at Mitchell's trial over her objection, and convicted her of both offenses. Mitchell appeals the carrying a handgun without a license conviction.

Analysis

Mitchell argues that the trial court erred in permitting the State to introduce into evidence the gun Deputy Spalding found during his warrantless search of her vehicle. Specifically, she contends that the "State failed to prove the police officer had adequate grounds to search [her] car." Appellant's Br. p. 3.

When ruling on the admissibility of evidence, the trial court is afforded broad discretion, and we will only reverse the ruling upon a showing of abuse of discretion. Gibson v. State, 733 N.E.2d 945, 951 (Ind. Ct. App. 2000). An abuse of discretion involves a decision that is clearly against the logic and effect of the facts and circumstances before the court. Id. When reviewing the trial court's ruling on the validity of the search, we consider the evidence most favorable to the trial court's ruling

and any uncontradicted evidence to the contrary to determine whether there is sufficient evidence to support the ruling. Id.

The Fourth Amendment to the United States Constitution provides all citizens with the right to be secure against unreasonable searches and seizures. Black v. State, 810 N.E.2d 713, 715 (Ind. 2004). In general, the Fourth Amendment prohibits warrantless searches. Id. There are, however, exceptions to the warrant requirement. Id. If the search is conducted without a warrant, the burden is upon the State to prove that, at the time of the search, an exception to the warrant requirement existed. Id.

A search incident to an arrest is a well-recognized exception to the Fourth Amendment's warrant requirement. Id. In New York v. Belton, 453 U.S. 454, 460 (1981), the United States Supreme Court held that when a police officer has made a lawful custodial arrest of an occupant of an automobile, the Fourth Amendment allows the officer to search the passenger compartment of that vehicle as a contemporaneous incident of arrest. Id. Unresolved after Belton was whether its rule was limited to situations where the officer makes contact with the occupant while the occupant is inside the vehicle, or whether it applies as well when the officer first makes contact with the person arrested after the latter has stepped out of his vehicle.

In Thornton v. State, 541 U.S. 615, 623-24 (2004), the Supreme Court concluded that Belton governed even when a police officer does not make contact until the person arrested has left the vehicle. Specifically, the court explained as follows:

In all relevant aspects, the arrest of a suspect who is next to a vehicle presents identical concerns regarding officer safety and the destruction of evidence as the arrest of one who is inside the vehicle. An officer may

search a suspect's vehicle under Belton only if the suspect is arrested. A custodial arrest is fluid and "the danger to the police officer flows from the fact of the arrest, and its attendant proximity, stress, and uncertainty," . . . The stress is no less merely because the arrested exited his car before the officer initiated the contact, nor is an arrestee less likely to attempt to lunge for a weapon or to destroy evidence if he is outside of, but still in control of, the vehicle. In either case, the officer faces a highly volatile situation. It would make little sense to apply two different rules to what is at bottom, the same situation.

Id. at 621. (citations omitted, emphasis in the original).

Here, Deputy Thompson had probable cause to arrest Mitchell lawfully because she was driving while her license was suspended. She does not challenge the legality of her arrest. The subsequent search of Mitchell's vehicle was a contemporaneous incident of her arrest and permissible under Thornton. See Black, 810 N.E.2d at 713. Thus, the warrantless search of Mitchell's vehicle did not violate her Fourth Amendment protections.

We now turn to her claim under the Indiana Constitution. Although the wording of Indiana's search and seizure clause, Article I, Section 11 of the Indiana Constitution, is nearly identical to that of its federal counterpart, the Fourth Amendment, the clause is given an independent interpretation and application. Myers v. State, 839 N.E.2d 1146, 1153 (Ind. 2005). In order to determine whether a search violated Article I, Section 11, we must evaluate the reasonableness of the police conduct under the totality of the circumstances. Id. This requires a consideration of the degree of intrusion into the subject's ordinary activities and the basis upon which the officer selected the subject of the search. Id. Our supreme court has summarized the evaluation as follows:

[A]lthough we recognize there may well be other relevant considerations under the circumstances, we have explained reasonableness of a search or seizure as turning on a balance of: 1) the degree of concern, suspicion, or knowledge that a violation has occurred, 2) the degree of intrusion the method of the search or seizure imposes on the citizen's ordinary activities, and 3) the extent of law enforcement needs.

Litchfield v. State, 824 N.E.2d 356, 361 (Ind. 2005). Rather than looking to federal requirements such as warrants and probable cause when evaluating Section 11 claims, the burden is on the State to show that under the totality of the circumstances the search was reasonable. State v. Bulington, 802 N.E.2d 435, 438 (Ind. 2004).

The first consideration is the law enforcement officer's concern, suspicion, or knowledge that a violation has occurred. In considering this factor, we examine the basis upon which the officer selected the subject of the search or seizure. Litchfield, 824 N.E.2d at 360. We are primarily concerned with insuring the subject was not selected via an arbitrary selection process. Id. Here, Mitchell was "running interference" for her boyfriend by staying behind his car when Deputy Thompson was attempting to pull him over. Tr. p. 5. She refused to yield to the deputy's lights and sirens. As the deputy was arresting her boyfriend, Mitchell got out of her car, approached the deputy, and asked what was going on. Even after Deputy Thompson asked her to leave several times, Mitchell refused to go. When the deputy asked Mitchell for identification and ran it through his computer, he learned that her driving privileges were suspended. He therefore arrested her and asked another deputy to search her car. Thus, Mitchell was not selected arbitrarily.

The second consideration is the degree of intrusion the method of the search or seizure imposes on the citizen's ordinary activities. For this factor, we consider the nature of the privacy interest upon which the search intrudes and the character of the intrusion itself. Id. Put another way, we consider the "indignity visited upon the citizen." Id. In this case, it was Mitchell who got out of her car, approached the deputy, intruded on the arrest of her boyfriend, and refused to leave when asked to do so several times. Deputy Thompson did not seek Mitchell's identity until she refused to leave. He subsequently learned that she had been driving while suspended. He then arrested her and had her car searched. We further note that the search took place at 8:00 p.m. near the entrance to an apartment complex, thus the intrusion as to public notice and embarrassment was somewhat lessened.

Finally, we examine the extent of law enforcement needs in conducting the search, or the "nature and immediacy of the governmental concern" involved. Id. The arrest of a suspect outside her vehicle presents concerns regarding officer safety and the destruction of evidence. Thornton, 541 U.S. at 621. Deputy Thompson therefore had a valid and immediate concern following Mitchell's arrest.

After examining the totality of the circumstances confronting the law enforcement officers on the night in question, we conclude that it was reasonable for Deputy Spalding to search Mitchell's vehicle. We therefore find no violation of Article I, Section 11 of the Indiana Constitution.

Conclusion

The trial court did not err in permitting the State to introduce into evidence the gun found during a warrantless search of Mitchell's vehicle. We affirm.

Affirmed.

BAILEY, J., and VAIDIK, J., concur.